GOVERNMENT OF INDIA
INFORMATION AND BROADCASTING
LOK SABHA

UNSTARRED QUESTION NO:580
ANSWERED ON:04.12.2003
RECOMMENDATIONS OF RADIO COMMITTEE
PRABHA RAU;SULTAN SALAHUDDIN OWAISI;VILAS BABURAO MUTTEMWAR

Will the Minister of INFORMATION AND BROADCASTING be pleased to state:

(a) whether the Government have set up a Radio Committee to bring about reforms into the radio broadcasting industry;

(b) if so, whether the committee have submitted its report to the Government; and

(c) if so, the details of the recommendations made by the committee and the decision taken by the Government thereon?

Answer

THE MINISTER OF STATE OF THE MINISTRY OF INFORMATION AND BROADCASTING (SHRI RAVI SHANKAR PRASAD)

(a) Yes, Sir.

(b) Yes, the Committee has submitted its report on 17th November, 2003.

(c) A copy of the executive summary of the recommendations of the Committee is placed at the annexure. No decision has yet been taken on these recommendations.

Annexure referred to in reply to part (c) of the Lok Sabha Unstarred Question No.580 for 4.12.2003.

Executive Summary

1. Licensing Process The Committee is of the view that the open auction bid process was not suitable for auctioning of the frequencies and it did not yield the desired results. Various legal challenges were raised in connection with the open auction bid process followed in case of Phase I of the liberalization of FM broadcasting.The Committee recommends that adoption of tender process for radio licenses is more suitable for the following reasons:

1. It is a standard and simple process followed by the Government in numerous sectors wherebysufficient experience has been garnered. The process is also judicially well recognised.

2. It is an internationally well-accepted process .

3. It is the preferred process, specifically for broadcast licenses. It is one of the prescribed processes incase of auction of spectrum licenses in Australia and is also followed in the United Kingdom. TheEuropean Community recommendation on Independent Broadcast Regulator also envisages a tender process for broadcast licenses.

The License process shall consist of the following rounds:

a. The first round should be the prequalification round and only bidders complying with the financial and technical eligibility criteria specified in the tender documents and as certified through a viability/ sensitivity study by an Eligible Financial Institution/Bank should qualify for the next round. The security for participating in this stage should be the earnest money deposit as specified in the tender document. The security amount should be in line with phase I tender document.

b. After the pre-qualification stage, the financial bids of the qualified applicants should be opened at a notified time and place to determine the Entry Fees.

The bid license amount must be based on the business plan and the security for the same should be in the form of an irrevocable, unconditional and confirmed bank guarantee for the full amount of the quoted license fees. The bank guarantee shall be the security for the period from the date of application till the date of payment in full of the entry fees (i.e. the date of allocation of frequency).

In the tender process the entry fees could naturally be different for each bidder. The number of highest bidders that equal the number of frequencies available, would automatically win the frequencies at each center (e.g. if there are seven frequencies available at a center, the seven highest bidders would be allotted the frequencies).

Immediately upon award of the bid, 25% of the entry fees should be payable and the frequency should be allocated only upon payment of the balance amount of the entry fees.

2. License Fees

The fixed annual license fee (that escalates annually at the rate of 15%) determined by the auction procedure in Phase-I of FM Licenses for Private Broadcasters has proved to be unviable. In such a scenario,migration to a one-time entry fees plus revenue sharing model, as in the case of cellular licenses (Telecom) in India, is the most suitable option.

Entry fees: The Committee recommends that the entry fees should be determined by a competitive bidprocess that will reflect the true market value of the frequency.

Revenue Share: In light of the fact that:

- The Tenth Plan has also envisaged a revenue share mechanism in radio.

- The revenue sharing arrangement has been tried in a number of instances in India (like Telephones/Major ports etc.) and in the media sector as well (in case of DTH).

- Revenue understatement may be a cause of concern in the case of large public utilities. But radio is comparatively a small local industry with much smaller capital investment and revenue flows. The only form of revenue in the radio industry is in the nature of advertising and opportunities of revenue understatement are therefore much less in comparison to an infrastructure industry like electricity or oil.

- Detailed guidelines have been formulated in relation to related party transactions in Accounting Standard 18 of the Institute of Chartered Accountants of India.

- Internationally the revenue share model is used in spectrum allocation (As in Australia) and broadcast licenses.

The Committee recommends a revenue share of 4% of gross revenue. This revenue share shall be subject to review by a committee every five years and may be increased/decreased, depending on the then prevailing market conditions. Such revision, covered under the agreement, will not be considered as a change in law.

3. Duration of License

The duration of the licenses in Phase-I of the award of FM broadcast licenses was fixed at ten (10) yearsand no extensions were permissible on any grounds whatsoever. Internationally, the initial period of license is lower (e.g. in Canada the period is seven (7) years , in U.K it is eight (8) years). However, in most countries, renewal of the licenses is permitted, which taken together with the original license period, would mean that the term of the license extends more than 10 years (e.g. in Canada renewals of license for terms not exceeding seven years (7) is permitted while in U.K licenses are renewable for one term not exceeding eight (8) years, after the completion of the first eight (8) years of license).

The Committee recommends that the license would be valid for a period of 10 years from the date of grantof operational license by WPC, as in the case of Phase-I. The Committee also recommends that the renewabf license be permitted, for a further period of five years, subject to satisfactory performance by the licensee and provided that no default has occurred during the license period. This assessment and recommendation for renewal of license will be made by the independent regulator to the Government, once the regulator is in place.

4. Multiple Licenses in a City

In Phase-I the licensees were not permitted to own multiple frequencies in the same city. The recent trendinternationally is towards abolition of such restrictions, as evident in (say) the Canadian Commercial RadioPolicy, 1998. Due to non-viability of market in the Indian context, the restriction on multiple licenses in the same center needs to be reviewed, without loosing sight of the potential for monopolies / oligopolies.

Therefore, the Committee recommends that:

a. The number of frequencies that an entity, directly or indirectly, may hold in a particular center be restricted to 3 or 33% of the total licenses available in the center, whichever is less.

b. No entity shall hold more than one frequency (license) for news and current affairs in any one center.

c. Further, such additional licenses should be permitted only if the total number of frequencies available in a center to establish a broadcast station (including frequencies in Phase-I) is equal to or more than six (6).

5. Total Number Of Frequencies That An Entity May Hold : Containing Monopoly

The total number of frequencies that an entity may hold, directly or indirectly, nationally in each phase should not be more than 25% of the total number of frequencies being tendered during the phase. The bidder should at the time of submitting a bid furnish a declaration to the effect that it shall not accept bids for more than 25% of the frequencies offered in any phase.

An undertaking should be said to be in a dominant position, if it holds more than 25% of the total operationalised licenses in the country and in the event of abuse of dominance by such dominant undertakings, the Government or the regulator, as the case may be,

should have the power to order the sale of the licenses, through a tender process, to other undertakings that are not connected in any manner whatsoever, with any dominant undertaking. This condition of reserving the right of the Government or the regulator (as the case may be) to break up a monopoly, should be part of the tender documents so as to minimize the chances of litigation.

The content plan for each separate frequency at the same center being bid for, by the same bidder must be different to ensure wider availability of choices to the listeners.

The licensees would neither be permitted to network among the multiple channels in one center, nor would they be allowed to network with another licensee in the same center.

Each license should constitute a separate undertaking and licensees should maintain separate accounts for each frequency allocated to them. It should be the endeavour of each licensee to properly segment the expenditure with reference to each license in accordance with the applicable accounting standards or guidelines issued by Institute of Chartered Accountants of India.

6. Networking

Networking or chain broadcasts means simultaneous transmission of programmes by various broadcast stations (transmitters). Licensees in Phase I were not permitted to Network except on important occasions with the prior permission of the Government.

In light of the fact that networking can significantly reduce the Capital Expenditure and OperatingExpenditure of a broadcast station (especially in small cities), we recommend that networking be permitted. We believe that the market mechanism will ensure differentiation of content reflecting listener`s choice.

Please note that Networking be permitted only amongst the broadcast stations of the same entity and notacross the licensees. Furthermore, networking should not be permitted in the same city.

7. News and Current Affairs

Phase-I licensees were not permitted to broadcast news and current affairs. The Committee recommendsthat the restriction on news and current affairs should be lifted and the committee strongly recommends that the AIR Code of Conduct and the applicable industry codes should be strictly followed. The violation of any aspects of these codes would result in the immediate revocation of the license.

8. Co-location

Co-location, in this particular context, is the term used to mean locating the transmitting setups of various broadcasters of a particular city in the same premises and sharing the common tower. This term gathers more significance in the situations of lesser frequency separation between the channels allotted for the same city. The basic idea behind co-location is that the Effective Radiated Power (ERP) of all the channelswould be nearly the same and since they are located at the same site, they will be attenuated similarly with the distance thus maintaining the same protection between the channels.

In this context, following observations are made:

(i) Co-location in metro cities was mandatory in Phase-I.The objective was to increase the availability of frequencies by spacing them 400 kHz instead of 800 kHz.

(ii) Most of the representations received by the Committee have opposed co-location due to the following reasons:

(a) For co-location purpose, it is necessary for private broadcasters to form a consortium.

(b) It is very difficult to form a consortium of private broadcasters competing with each other.

(c) If a Private broadcaster backs out, his share of cost on common infrastructure would have to be borne by the remaining ones.

(d) Private broadcasters have to bear substantial cost on studio-transmitter link as in co-location case, the studio setup would mostly be at a different location.

(e) There are number of other operational difficulties.

In view of the above difficulties expressed by the private broadcasters, it is recommended that co-location may not be made mandatory in Phase-II.

9. Reserve Entry Fees

In Phase-I the Government divided the centers (cities where frequencies were offered to private bidders) infive categories for the purposes of license fee: A+ (reserved license fee Rs. 125 lacs), A (reserved license fee Rs. 100 lacs), B (reserved license fee Rs. 75 lacs), C (reserved license fee Rs. 50 lacs) and D (reserved license fee Rs. 20 lacs).

In light of the following:

Internationally (e.g. in case of Spectrum Allocation in Australia) the Government is free to determine areserve price in case of scarce resources like frequencies so that due to imperfections, the market does not grossly undervalue the frequencies. In Phase I also,

some licenses were granted to the bidders at the reserve price, as there were no other applicants. Even internationally, instances wherein there is only one bidder for a particular frequency are quite common (please see the note on Canada and Australia, Annexure III).

However, the purpose of such reserve price is again not meant for revenue maximization but only to prevent gross undervaluation. Reserve price must be objectively calculated on pre-published criteria in the light of alternate and probable uses of the frequency. It should necessarily reflect the lowest permissible price.

The Committee recommends that the historiccal reserve price of Phase I be followed. The Government canconsider revising the reserve price in subsequent regimes.

10. Foreign Investment

The Committee is in favour of a simplified foreign investment regime for radio.

We recommend that the following safeguards be introduced in the license agreement:

a. FDI up to 26% should be permitted in FM broadcasting (news as well as entertainment).

b. While calculating the 26% limit on FDI, the foreign holding component, if any, in the equity of the Indian shareholder companies of the licensee should be duly factored in on a pro rata basis to determine the total foreign holding in the licensee. The equity held by the largest Indian shareholder group should be at least 51% of the equity excluding equity held by public sector banks and public financial institutions.

c. 75% of the directors of the licensee, the Chief Executive Officer of the licensee and/or head of thechannel and all key executives and editorial staff of the channel must be resident Indians appointed by the licensee without any reference on or from any other company for all news channels. For all entertainment channels exception to the above could be made for `People of Indian Origin` cardholders / NRIs for the position of key executives and editorial staff. This facility will not beavailable to channels providing any kind of news. It should be obligatory on the part of the licensee to inform the Ministry in writing before effecting any alteration in the foreign share holding pattern or in the shareholding of the largest Indian shareholder and / or in the CEO / Board of Directors.Further, the licensee should be liable to intimate the Ministry the details of any foreigners/ NRIsemployed/engaged by it for a period exceeding 60(sixty) days. Further, there should be a bar on direct/ indirect outsourcing of content to foreign parties.

d. The licensee should be required to make disclosures of any shareholders agreements, loan agreements and such other agreements that are finalized or proposed to be entered into. Subsequent changes to the said agreements should be permitted only with the prior approval of the Ministry. Further, the licensee should not be permitted to raise loans from foreign entities for all news channels beyond the proportion of foreign equity allowed. (In other words, for Licensees putting out news, upto 26% of their total equity can be taken as loans from foreign sources and no more)

e. In the light of the aforementioned changes to the FDI policy, in respect of FM broadcasting, theexisting licensees should be required to effect the necessary amendments to their Memorandum of Association and Articles of Association and relevant agreements no later than two months from the date of migration of their licenses from Phase I to Phase II.

11. Increase in Number of frequencies for Private FM Broadcasts

Committee is of the view that the released frequencies for phase II of liberalization of FM transmission willinclude unutilized spectrum in phase I after migration.

The spectrum being a scarce resource has to be used rationally, efficiently and optimally by all.

The committee strongly recommends that as the market develops and gathers the required momentum, Government should release additional frequencies in subsequent phases of liberalization, so as to boost further growth of the market.

The Committee is of the opinion that some other available frequencies may be more effectively utilized for the purposes of educational broadcasts by IGNOU. It has been brought to the notice of the Committee thatduring the last few years AIR is in the process of migrating high quality music programmes like Vividh Bharati from MW to FM. The possibility of availing these MW transmitters from AIR for the purposes ofeducational broadcasts by IGNOU requires serious consideration. This would address the issue of costs as IGNOU will not have to incur heavy expenditure on building broadcast infrastructure because AIR facilitiescould be used by IGNOU at a reasonable cost. This arrangement would lead to the best possible use of spectrum and release of additional frequencies.

12. Non-Commercial Channels

The PBS (Public Broadcast Service in the USA) model and the BBC model for non-commercial channels iswidely followed abroad, where the programmes are funded by various organisations.

The Committee proposes a similar model wherein, out of the 4% revenue share that the Government wouldreceive from the FM broadcasters, 1% point of the revenue share should be set apart as a separate fund dedicated for the purpose of developing the non-commercial channels (related to a wide range of areas such as culture and heritage of India, public health etc.). The resources which will accumulate in this fund, will be sought by private broadcasters to develop non-commercial channels and programmes, in accordance with the directions of a Committee of eminent personalities of the nation formed by the Government. Thefunds should be disbursed through transparent rules and regulations framed for this purpose by the esteemed Committee. There would be a yearly

audit of the broadcaster and the audit report would be presented to the Committee.

Such non-commercial channels will be initially required in all A+, A and B category towns, followed by its expansion in other cities in the future.

Considering the fact that the number of commercial channels are already limited, it is suggested that additional frequencies be released at the earliest for the above non-commercial channels.

13. Niche Channels Through Fiscal Incentives

The Committee is of the view that it is possible to help the market process in the direction of development of niche channels. In this respect the Committee recommends the following :

In every city, certain frequencies should be reserved for niche channels to be tendered separately with a low reserve fee and low revenue share percentage. Detailed terms and conditions may be prescribed to ensure that such channels are exclusively developed for niche programming and no partial niche programming be allowed.

The Committee feels that such niche channels will be initially required in A+, A and B category towns, followed by its expansion in other cities in future. The Committee also strongly urges the Government to consider releasing additional frequencies to encourage such niche channels.

14. Foreign Satellite Broadcast

Presently, Government of India has a policy on uplinking of TV channels. The following two major benefits have accrued from this policy:

(a) Outflow of foreign exchange has been curtailed since the uplinking is done from the Indian soil instead of foreign countries.

(b) Government is able to enforce a code of conduct for the TV channels.

In the absence of similar policy on the uplinking of Radio channels in the country, valuable foreign exchange outflow is taking place and the Government is unable to enforce any code of conduct on Satellite radio channels.

In view of the above, it is recommended that Government should come out with a policy on uplinking of satellite radio channels and downlinking process, so that the forex outflow could be curtailed and a code of conduct could be enforced.

15. Migration

For the purposes of migration to the new regime, 24th July 2003 (the day of appointment of this Radio Broadcast Policy Committee) shall be taken as the `Cut-off Date` from which the rights and obligations under the new regime will be applicable to the players. Rights accrued and Liabilities incurred till the Cut − off Date shall be governed by the old regime.

The Committee is of the opinion that operationalisation of license or at least a serious attempt at operationalisation should be the criterion for distinguishing between serious licensees and not so serious ones. Therefore, the following should be entitled to migrate to the new regime:

a. Successful bidders that have operationalised the license and have paid the license fees till date. From the cut off date all fees paid shall be adjusted (but not refunded) against the new system of revenue share.

b. Successful bidders that operationalised the license but later due to non-viability of business defaulted in payment of license fees.

i. They will have to pay the original license fees due till the Cut off Date.ii. Defaults in the original license fee that was to be due, after the cut off date, are to be ignored.

iii. Payment will be treated as one time entry fee.
c. In case of delay in operationalisation due to co-location, those who are operating under `deemed operationalisation`, should be granted a revised deadline, either to co-locate by say December 31, 2003 or set up independent facilities by say March 31, 2004. On completing either of the above, they shall be entitled to migrate to the Phase II licensing system. Till the point of operationalisation, they will be governed by the old regime.

The Committee strongly recommends that there should not be any blacklisting of bidders for new licenses on the basis of their default in Phase-I, as the Phase-I was characterized by acute market and regulatory imperfections that rendered the market unviable. Also, the Committee appeals to all bidders who have gone to court to withdraw their litigations and take advantage of the new Phase II regime.

6. Import Duty

In this sector, almost all the broadcasting equipments are imported and none of them are manufactured domestically. To make the economics more viable, the Committee suggests that the import duty on the broadcast equipment be brought in line with that of the Telecom sector.

17. Code of Conduct

The Committee suggests that broadcast by private broadcasters must not, inter alia contain the following (as per the AIR code):

- Criticism of friendly countries.

- Attack on religion or communities.

- Anything obscene or defamatory.

- Incitement to violence or anything against maintenance of law and order.

- Anything amounting to contempt of court.

- Aspersions against the integrity of the President, Governors and Judiciary.

- Attack on political party by name.

- Hostile criticism of any State or the Centre.

- Anything showing disrespect to the Constitution or advocating change in the constitution by violent means, but advocating changes in the constitutional way should not be debarred.

AIR code and the advertising code to be looked at as per current scenario and appropriate changes can be made, if required.

18. Shift of IGNOU (Educational Broadcast) to Medium Wave and availing of MW Transmitters from AIR

In Phase-I of liberalization of FM broadcasting one frequency in each of the forty cities was reserved foreducational broadcast by IGNOU. However, so far IGNOU has been able to operationalise only 10 FM stations. It appears that due to limits on availability of funds IGNOU may not be in a position tooperationalise all these frequencies. On account of paucity of spectrum it is not advisable to allocate FM frequencies for educational broadcasts.

The Committee is of the opinion that some other available frequencies (like medium wave) may be more effectively utilized for the purposes of educational broadcasts by IGNOU. It has been brought to the notice of the Committee that during the last few years AIR is in the process of migrating high quality music programmes like Vividh Bharati from MW to FM. The possibility of availing these MW transmitters from AIR for the purposes of educational broadcasts by IGNOU requires serious consideration. This would address the issue of costs as IGNOU will not have to incur heavy expenditure on building broadcast infrastructure because AIR facilities could be used by IGNOU at a reasonable cost. This arrangement would lead to the best possible use of spectrum.

19. Broadcast Regulator

The radio industry in India is in a nascent stage of growth. However, as the market develops a number of legal and social issues (like content regulation, networking regulation etc.) as well as technological issues (like digital radio broadcasting (terrestrial/satellite) subscription radio channels etc.) are likely to arise in relation to radio. The market competitive forces may not always work in harmony and sometimes may require reconciliation of competing interests. Therefore, as the industry develops it will require maintenance of an appropriate regulatory environment through an autonomous regulator.

The Committee in this respect shares the views and the concerns of the Hon`ble Supreme Court as reflected in the case of Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal, wherein it was observed that the Central Government should establish an independent autonomous public authority representative of all sections and interests in the society to control and regulate the use of airwaves.

The Committee therefore, recommends the constitution of an independent broadcast regulator.

The Committee would like to clarify that the Broadcast Regulator should provide and maintain appropriate regulatory environment to foster market led growth rather than seek to supplant and substitute market forces through regulation. The main objective of the Broadcast Regulator should be to seek proper enforcement of rules and regulations and its actions should primarily be complaint driven.

We suggest to the Ministry of Information & Broadcasting that pending the creation of a Regulator (which is likely to take time, requiring Parliamentary approval), a non-statutory Committee be set up which has Terms of Reference similar to what the Regulator would have. (We understand that the formal creation of SEBI was preceeded by such a Committee).

20. Penalty for Non- Operationalisation of Awarded Licenses

The Committee strongly recommends that after being awarded the license, it is mandatory for Licensee tooperationalise the license within a maximum period of one year. If the licensee does not operationalise the license within one year from the date of the award, the Government, as a condition of the license, will forfeit the license and re-tender it in public interest.

It is the standard process in international competitive bidding recognized and elaborated upon in a number of International Instruments like the WTO Agreement of Government Procurement; UNCITRAL Model Law on the Procurement of Goods (Under Article 18

tendering is the preferred mode of procurement), World Bank Guidelines on Procurement etc. The revenue share percentage suggested by industry players varies in the range of 2-3% of gross revenue. On the other hand the revenue share percentage suggested in Ernst & Young Report is in the range of 3-5%. Section 9 (b) of the Broadcasting Act, 1991. Section 9 (d) of the Broadcasting Act, 1991. Similar restrictions obtain internationally e.g. in UK. Section 1 of the Tender Documents. See revised eligibility criteria Clause (b) and (d) (1995) 2 SCC 161